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Private Equity and Funds Newsletter

January-March 2025

Introduction

As per publicly available information, private equity and venture capital investments in India reached USD 7.9 billion (United States Dollar seven point nine billion) across 270 (two hundred seventy) deals in the first quarter of 2025, marking an 8% increase compared to the same period in 2024.[1] The IT & ITES sector attracted the largest share, garnering USD 3.8 billion[2] (United States Dollar three point eight billion).

Data released by the research firm Venture Intelligence reveals that 10 (ten) mega deals each valued at USD 100 million (United States Dollar one hundred million) or more accounted for a cumulative investment of USD 2.5 billion (United States Dollar two point five billion) in January 2025[3].

[1] https://www.thehindubusinessline.com/markets/indian-pe-vc-investments-hit-79-billion-in-q1-up-8-y-o-y/article69399655.ece#:~:text=By%20Anupama%20Ghosh,to%20data%20from%20Venture%20Intelligence.

[2] https://www.fortuneindia.com/business-news/pe-vc-investments-rise-8-to-79-bn-in-q1-2025-18-mega-deals-drive-51-bn/121514#:~:text=Private%20Equity%E2%80%93Venture%20Capital%20(PE%2DVC)%20firms%20invested%20over,which%20drove%20up%20the%20overall%20deal%20value.&text=These%20figures%20include%20VC%20investments%2C%20but%20exclude%20PE%20investments%20in%20real%20estate.

[3] PE-VC records $3.4 billion investments in Jan - The Times of India

Supported by domestic demands, the startup ecosystem saw a significant uptick, with venture capital funding surging by 69.7% year-over-year to USD 883.2 million (United States Dollar eight hundred eighty three point two million) in January. Deal volume also rose by 40.9%, from 93 (ninety three) deals in January 2024 to 131 (one hundred thirty one) in January 2025.[4]

It is expected that a correction in public market valuations and a declining interest rate curve may further enhance deal activity and valuations in the coming months of 2025.

In line with the global trade dynamics, the Government of India is working to streamline regulatory bottlenecks and boost investments across sectors. As announced by the Finance Minister in the Union Budget 2025-26, the Government is considering rationalising the requirements for company mergers and expanding the scope of fast-track mergers to simplify the process. Additionally, a High-Level Committee has been proposed to undertake regulatory reforms, with a mandate to review all non-financial sector regulations, certifications, licenses and permissions.

This newsletter captures the regulatory developments from January 2025 to March 2025 relating to Alternative Investment Funds ("**AIFs**"), Real Estate Investment Trusts ("**REITs**"), Infrastructure Investment Trusts ("**InvITs**"), Venture Capital Funds ("**VCFs**"), Foreign Venture Capital Investors ("**FVCIs**") and Foreign Portfolio Investors ("**FPIs**") that are likely to shape the investment activities in India.

Overview of the Regulatory Measures

Foreign Direct Investment

Press Note 2 (2025): Clarifications on the permissibility of issuance of bonus shares to existing non-resident shareholder(s) by Indian companies engaged in sectors prohibited for foreign direct investment

The Department for Promotion of Industry and Internal Trade, *vide* Pess Note 2 dated April 7, 2025, has amended Para 1 of Annexure 3 of the Consolidated Foreign Direct Investment ("**FDI**") policy dated October 15, 2020, dealing with the issuance of rights/bonus shares. A clarification is included stating that an Indian company engaged in a sector/activity prohibited for FDI is permitted to issue bonus shares to its pre-existing non-resident shareholder(s) provided that the shareholding pattern of the pre-existing non-resident shareholder(s) does not change pursuant to the issuance of bonus shares.

InvITs and REITs

Amendments to Master Circulars for InvITs and REITs

The Securities and Exchange Board of India ("**SEBI**"), *vide* circulars dated March 28, 2025 for InvITs and REITs, has amended the Master Circulars for InvITs and REITs dated May 15, 2024. Some of the key amendments are as follows: (a) in case of InvITs, 15% of the units allotted to sponsor(s) and sponsor group(s) will be locked-in for a period of 3 (three) years from the date of trading approval granted for the units (as long the project manager of the InvIT is the sponsor or an associate of the sponsor and continues to act in such capacity for a period of minimum 3 (three) years from the date of trading approval). Further, if the condition specified above in relation to the project manager of the InvIT is not satisfied, 25% of the units allotted to the sponsor(s) and sponsor group(s) will be locked-in for a period of 3 (three) years from the date of trading approval granted for the units; and (b) in case of REITs, 15% of the units allotted to sponsor(s) and sponsor groups will be locked in for a period of 3 (three) years from the date of trading approval granted for the units. It is further provided that the remaining units allotted to sponsor(s) and sponsor group(s) will be locked in for 1 (one) year from the date of trading approval – and in each case, the sponsor(s) and sponsor group(s) are required to comply with the minimum holding requirements under the relevant InvIT and REIT regulations issued by SEBI. Inter-se transfer is permitted among the sponsor groups subject to the condition that the lock-in period will continue for the remaining period with the transferee. Guidelines are provided for follow-on offers by publicly offered InvITs/REITs including

[4] https://www.bizzbuzz.news/industry/startups/india-sees-marked-surge-in-pe-vc-funding-for-startups-in-jan-feb-1354027

application processes, public unitholding requirements and filing procedures.

AIFs

Relaxation in timelines for holding AIF's investments in dematerialised form

SEBI, *vide* circular dated February 14, 2025, has modified the timelines with respect to AIFs holding their investments in dematerialised form. Some of the relaxations are as follows:

1. any investment made by an AIF on or after July 1, 2025, will be held in dematerialised form only;
2. the investments made by an AIF prior to July 1, 2025, are exempted from the requirement of being held in dematerialised form, except in the prescribed cases (which must be held in dematerialised form on or before October 31, 2025); and
3. the requirement of holding investments in dematerialised form will not be applicable to:
    a) scheme of an AIF whose tenure (not including permissible extension of tenure) ends on or before October 31, 2025; and
    b) scheme of an AIF which is in extended tenure as on February 14, 2025.

Reserve Bank of India

Foreign Exchange Management (Mode of Payment and Reporting of Non- Debt Instruments) (Third Amendment) Regulations, 2025

The Reserve Bank of India ("**RBI**"), *vide* notification dated January 14, 2025, has issued the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) (Third Amendment) Regulations, 2025, amending the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019, in relation to mode of payment and remittance of sale proceeds for persons resident outside India. Accordingly, 'banking channels' will include any Rupee vostro accounts, including special Rupee vostro accounts, permitted to be held by a person resident outside India under the Foreign Exchange Management (Deposit) Regulations, 2016 ("**Deposit Regulations**"). Some of the key provisions are as follows:

1. For purchase or sale of equity instruments of an Indian company by a person resident outside India:
    a) the amount of consideration must be paid as inward remittance from abroad through banking channels or out of funds held in any repatriable foreign currency or Rupee account maintained in accordance with the Deposit Regulations;
    b) the amount of consideration includes issue of equity shares by an Indian company against any funds payable by it to the investor and swap of equity instruments or equity capital. Equity instruments must be issued to the person resident outside India making such investment within 60 (sixty) days from the date of receipt of the consideration;
    c) if such equity instruments are not issued within 60 (sixty) then the investment amount will be refunded to the person concerned by outward remittance through banking channels or by credit to his repatriable foreign currency or Rupee account, within 15 (fifteen) days from the date of completion of 60 (sixty) days;
    d) Indian company issuing equity instruments may open a foreign currency account with an authorised dealer in India in accordance with Foreign Exchange Management (Foreign currency accounts by a person resident in India) Regulations, 2016; and
    e) sale proceeds (net of taxes) of the equity instruments may be remitted abroad or credited to the investor's repatriable foreign currency or Rupee account maintained as per the Deposit Regulations.
2. Investment by FPIs:
    a) the amount of consideration will be paid as inward remittance from abroad through banking channels or out of funds held in a foreign currency account and/or a Special Non-Resident Rupee ("**SNRR**") account maintained in accordance with the Deposit Regulations;
    b) the foreign currency account must be used exclusively for transactions under Schedule II of the Foreign Exchange Management (Non- Debt Instruments) Rules, 2019; and
    c) sale proceeds (net of taxes) of equity instruments and units of REITs, InvITs and

domestic mutual funds may be remitted outside India/credited to the foreign currency account/SNRR account of the FPI.

3. Investment in a Limited Liability Partnerships ("**LLPs**"):

   a) payment by an investor towards capital contribution of an LLP will be made by way of an inward remittance through banking channels or out of funds held in any repatriable foreign currency or Rupee account maintained in accordance with the Deposit Regulations; and

   b) the disinvestment proceeds may be remitted outside India or may be credited to any repatriable foreign currency or Rupee account of the person concerned maintained as per the Deposit Regulations.

4. Investment by an FVCI:

   a) the amount of consideration will be paid as inward remittance from abroad through banking channels or out of funds held in a foreign currency account and/or a SNRR account maintained in accordance with the Deposit Regulations; and

   b) the sale/maturity proceeds (net of taxes) of the securities may be remitted outside India or may be credited to the foreign currency account or a SNRR account of the FVCI.

5. Investment by a person resident outside India in an investment vehicle:

   a) the amount of consideration will be paid by the person concerned as inward remittance from abroad through banking channels or by way of swap of shares of a special purpose vehicle or out of funds held in any repatriable foreign currency or Rupee account maintained in accordance with the Deposit Regulations; and

   b) the sale/maturity proceeds (net of taxes) of the units may be remitted outside India or may be credited to any repatriable foreign currency or Rupee account of the person concerned, maintained in accordance with the Deposit Regulations.

6. Investment in Indian Depository Receipts ("**IDRs**"):

   a) the regulations cater to specific categories of investors, such as Non-Resident Indians ("**NRIs**"), Overseas Citizens of India ("**OCIs**"), and FPIs, outlining distinct payment methods. NRIs/OCIs may invest in the IDRs out of funds held in their Non-Resident External ("**NRE**")/Foreign Currency Non-Resident ("**FCNR**") bank account, while FPIs can utilise foreign currency or SNRR accounts, maintained in accordance with the Deposit Regulations; and

   b) redemption/conversion of IDRs into underlying equity shares of the issuing company must be in compliance with the Foreign Exchange Management (Overseas Investment) Rules, 2022.

7. Issue of convertible notes by an Indian start-up company:

   a) Indian startups issuing convertible notes to a person resident outside India must receive the amount of consideration by inward remittance through banking channels or by debit to any repatriable foreign currency or Rupee account of the person concerned, maintained in accordance with the Deposit Regulations; and

   b) repayment or sale proceeds may be remitted outside India or credited to any repatriable foreign currency or Rupee account of the person concerned.

JSA Private Equity Practice

We provide legal services to PE funds across the full range of their operations and activities, besides International and Domestic entities. The PE practice represents both investors and investee entities in diverse sectors. We are actively involved in legal and governmental issues affecting the Private Equity and Venture Capital industry on a national level, including legislative and regulatory matters, and provide ongoing support, advice and views to the various committees of SEBI. The PE practice complements and works closely with our Investment Funds practice to provide legal advice on several aspects such as:

- Onshore and Offshore structuring and formation of funds in India and overseas and enabling tax efficient modes of investing in India;
- Investment structures to ensure compliance with Takeover Regulations, Insider Trading Regulations;
- Representation of funds, either alone or as lead members of a syndicate;
- Drafting applications for regulatory approvals and liaising with regulatory authorities, including SEBI/ RBI registrations and compliance;
- Drafting offer documents for the raising of funds;
- Due Diligence of prospective investee companies and targets;
- Negotiation assistance from term sheet stage till closing;
- Assisting in downstream investments;
- Advising on ongoing activities of portfolio companies;
- Assistance with exit strategies and implementation thereof;
- Advising investee companies on issues relating to receiving venture capital and PE investment;
- Negotiations and drafting of transaction documents including investor agreements, share subscription/purchase agreements, joint venture agreements and shareholder agreements;
- Documentation and overall transactional support, including working closely with regulators like RBI, Foreign Investment Facilitation Portal (FIFP) and SEBI; and
- Structuring incentives and sharing of the 'carry' for fund managers and research analysts.

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